

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 7 Case
	)	Number <u>98-13327</u>
Samuel Washington	)	
	)	
Debtor	)	FILED
	)	2002 MAY 23 A 8:52
Georgia Lottery Corporation,	)	
	)	
Plaintiff	)	
	)	
V.	)	
	)	Adversary Proceeding
Samuel Washington	)	Number <u>01-01079A</u>
	)	
Defendant.	)	

**ORDER**

The Plaintiff, Georgia Lottery Corporation, by motion seeks summary judgment on the issue of nondischargeability of debt. The Defendant, Samuel Washington, opposes the motion. The Plaintiff alleges that the Defendant's debt to it is for lottery ticket sale proceeds which are nondischargeable under 11 U.S.C. §523(a)(4).<sup>1</sup> The Defendant asserts that 1) the contracts between

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<sup>1</sup>11 U.S.C. §523(a) states in pertinent part:  
(a) A discharge under section 727...of this title does not discharge an individual debtor from any debt--  
(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny

Plaintiff and Defendant are invalid and 2) the Plaintiff miscalculated the amount due. The Plaintiff's motion for summary judgment is granted.

Federal Rule of Bankruptcy Procedure 7056 incorporates Rule 56 of the Federal Rules of Civil Procedure. Under Rule 56, this court will grant summary judgment only if "...there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of establishing its right of summary judgment. See Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11<sup>th</sup> Cir. 1991). The evidence must be viewed in a light most favorable to the party opposing the motion. See Adickes v. S.H.Kress & Co., 398 U.S. 144, 57, 90 S.Ct. 1598, 1608, 26 L.Ed. 2d 142 (1970). However, "[t]o defeat a motion for summary judgment, the non-moving party may not rely on 'mere allegations.' It must raise 'significant probative evidence' that would be sufficient for a jury to find for that party." LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 835 (11<sup>th</sup> Cir. 1998), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed. 2d 202 (1986).

Summary judgment is appropriate when there is no dispute as to any material fact and the moving party is entitled to judgment

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as a matter of law. Fed.R.Civ.P. 56(c); Combs v. King, 764 F.2d 818, 827 (11<sup>th</sup> Cir. 1985). The moving party bears the burden of proof and may do so by showing that an essential element of the non-movant's case is lacking. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). "[A] party seeking summary judgment always bears the initial responsibility of informing the...court of the basis for its motion, and identifying those portions of the 'pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which is believes demonstrate the absence of a genuine issue of material fact." Id. at 2553 (quoting Fed.R.Civ.P. 56(c)). Once the moving party has properly supported its motion with such evidence, the party opposing the motion "'may not rest upon mere allegations or denials of his pleading, but...must set forth specific facts showing that there is a genuine issue for trial.'" Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986) (quoting First Nat'l Bank of Arizona v. Cities Services Co., 391 U.S. 253, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968) and Fed.R.Civ.P. 56(e)). "In determining whether the movant has met its burden, the reviewing court must examine the evidence in a light most favorable to the opponent of the motion. All reasonable doubts and inferences should be resolved

in favor of the opponent.” Amey, Inc. v. Gulf Abstract & Title, Inc., 758 F.2d 1486, 1502 (11<sup>th</sup> Cir. 1985) (citations omitted), cert. denied, 475 U.S. 1107, 106 S.Ct. 1513, 89 L.Ed.2d 912 (1986). “Summary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the factual inferences that should be drawn from these facts. If reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment.” Warrior Tombigbee Transp. Co., Inc. v. M/A Nan Fung, 695 F.2d 1294, 1996-97 (11<sup>th</sup> Cir. 1983) (citations omitted). The Court has jurisdiction to hear this matter as a core bankruptcy proceeding under 28 U.S.C. § 157(b) (2) (I) and 28 U.S.C. § 1334.

The facts are as follows. The Defendant was the sole owner of a convenience store in Waynesboro, Georgia called “Sam’s Stop Shop.” (Pl.’s 1<sup>st</sup> Req. Admis. ¶ 8). The Defendant applied to be a lottery ticket retailer on April 14, 1993. Subsequently, on April 20, 1993, Sam’s Stop Shop contracted with the Plaintiff to sell instant lottery tickets. (Padgett Aff. ¶ 4). On September 4, 1993, the store entered into a second contract to sell on-line tickets. (Padgett Aff. ¶¶ 4-5). The instant ticket retailer contract names the Defendant as retailer and is signed “Samuel Washington d/b/a By: Sam’s Stop Shop.” The on-line retailer

contract names Sam's Stop Shop as retailer but does not name the Defendant. The Georgia Lottery Corporation signature block is signed "Sam's Stop Shop" with the Retailer's signature block containing the signature from the Plaintiff's CEO. Arrows indicate that the titles over the signature blocks are reversed.

Both contracts contain the following provisions (differences between the on-line and retail contracts are shown in brackets):

#### C. COMPLIANCE WITH LAWS

Retailer agrees to comply with and be bound by the Act, the Rules and Regulations, and all other applicable federal, state and local laws, rules, regulations, ordinances and orders...

....

#### D. SALE OF LOTTERY TICKETS

1. Retailer agrees that it will sell Lottery tickets for any and all [instant/on-line] lottery games, as directed by GLC or provided by this Contract, the Act or the Rules and Regulations.

....

#### J. DEPOSIT OF FUNDS

1. Retailer acknowledges and agrees that it has a fiduciary duty to preserve and account for Lottery proceeds collected by it and that it shall be liable for all proceeds.

2. Retailer agrees to deposit to the credit of GLC in a separate account in a designated bank, [instant ticket contract: "reasonably satisfactory to GLC,"]

all monies received by Retailer from the sale of Lottery tickets, less the amounts properly retained as Commissions for the sale of Lottery tickets and credits for the direct payment of prizes which are actually paid by Retailer.

3. The account Retailer uses for Lottery transactions must be subject to electronic funds transfer for payment of amounts due to GLC, unless otherwise authorized by GLC.

4. All deposits and transfers of Lottery proceeds under this Contract shall be made in accordance with the Act and the Rules and Regulations.

#### K. OTHER RETAILER OBLIGATIONS

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4. Retailer acknowledges and agrees that it is responsible for all proceeds from the sale of Lottery tickets and that such proceeds shall constitute a trust fund in favor of GLC until paid to GLC.

....

#### R. MISCELLANEOUS

....

2. Retailer agrees that it shall be liable for all costs incurred by GLC in enforcing this Contract or in collecting any amounts due to GLC from Retailer hereunder, including court costs and attorneys' fees.

Between July and October 1993, Sam's Stop Shop sold \$14,100.00 in instant tickets and \$2,248.00 in on-line tickets, which, after deducting the Defendant's commissions and cash-in tickets, generated lottery proceeds of \$7,590.61. (Padgett Aff. ¶¶ 9-15). On seven

occasions the Plaintiff attempted to electronically transfer the proceeds from the Defendant's bank account but failed due to insufficient funds. (Padgett Aff. ¶¶ 9-15). The Defendant did not maintain a separate bank account for lottery ticket proceeds. (Pl.'s 1<sup>st</sup> Req. Admis. ¶ 7). The Defendant remitted \$1,209.00 to the Plaintiff, leaving a deficiency of \$6,381.61. (Padgett Aff. ¶ 16). The Plaintiff sued the Defendant in state court for this deficiency, and on October 15, 1999, the State Court of Burke County, Georgia awarded the Plaintiff summary judgment for \$7,130.77, which was comprised of \$6,381.61 in principal, \$663.16 in attorney fees and \$86.00 in court costs.

On December 2, 1998, the Defendant filed for chapter 7 bankruptcy relief. The case converted to chapter 13 on December 10, 1998, and then converted back to a chapter 7 on August 30, 2001. On September 14, 2001, the Plaintiff filed this adversary proceeding to determine the dischargeability of this debt. The underlying chapter 7 case was discharged on January 8, 2002. On March 8, 2002, the Plaintiff filed this motion for summary judgment.

On December 20, 2001, the Plaintiff served the Defendant its First Requests for Admissions:

1. Please admit that You previously operated a business under the name Sam's Stop Shop at 2344 Hwy 25

South in Waynesboro, Georgia.

2. Please admit that You applied to be a retailer of Georgia Lottery tickets in April of 1993.

3. Please admit that the document attached hereto as Exhibit A is a true and correct copy of the Application You submitted to the Georgia Lottery Corporation to become a retailer.

4. Please admit that Your signature appears on the last page of the document attached hereto as Exhibit A.

5. Please admit that the document attached hereto as Exhibit B is a true and correct copy of the On-Line Retailer Contract You signed with the Georgia Lottery Corporation.

6. Please admit that the document attached hereto as Exhibit C is a true and correct copy of the Instant Ticket Retailer Contract that You signed with the Georgia Lottery Corporation.

7. Please admit that You did not deposit proceeds from sales of Georgia Lottery tickets into a separate bank account.

8. Please admit that You were the sole owner of Sam's Stop Shop.

9. Please admit that You had the sole authority to determine which bills related to the operation of Sam's Stop Shop were paid.

10. Please admit that under Section J(1) of the Instant Ticket Retailer Contract attached hereto as Exhibit C, You had a fiduciary duty to preserve and account for proceeds from the sale of Georgia Lottery tickets.

11. Please admit that under Section K(4) of the Instant Ticket Retailer Contract attached hereto as Exhibit C, You were responsible for all proceeds from



the sale of Georgia Lottery tickets.

12. Please admit that under Section K(4) of the Instant Ticket Retailer Contract attached hereto as Exhibit C, You held proceeds from the sale of Georgia Lottery tickets in trust.

13. Please admit that under Section J(1) of the On-Line Retailer Contract attached hereto as Exhibit B, You had a fiduciary duty to preserve and account for proceeds from the sale of Georgia Lottery tickets.

14. Please admit that pursuant to Section K(4) of the On-Line Retailer Contract attached hereto as Exhibit B, You were responsible for all proceeds from the sale of Georgia Lottery tickets.

15. Please admit that pursuant to Section K(4) of the On-Line Retailer Contract attached hereto as Exhibit B, You held proceeds in from the sale of Georgia Lottery tickets in trust.

The Defendant admits the above because he did not answer Plaintiff's First Requests for Admissions within 30 days. FED. R. BANKR. PROC. 7036.

The Plaintiff argues that the Defendant's judgment debt should not be discharged under 11 U.S.C. §523(a)(4) because the debt was the result of defalcation while acting as a fiduciary. According to the Plaintiff, the Defendant was a fiduciary under Official Code of Georgia Annotated (O.C.G.A.) §50-27-21, which sets out fiduciary duties for Georgia Lottery ticket retailers.<sup>2</sup> As a

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<sup>2</sup>O.C.G.A. §50-27-21 states in pertinent part:  
(a) All proceeds from the sale of the lottery tickets or shares

fiduciary, the Defendant was required to hold the ticket proceeds in trust and committed defalcation when he failed to remit these proceeds to the Plaintiff.

The Defendant asserts that summary judgment should be denied because

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shall constitute a trust fund until paid to the corporation either directly or through the corporation's authorized collection representative. A lottery retailer and officers of a lottery retailer's business shall have a fiduciary duty to preserve and account for lottery proceeds and lottery retailers shall be personally liable for all proceeds. Proceeds shall include unsold instant tickets received by a lottery retailer and cash proceeds of the sale of any lottery products, net of allowable sales commissions and credit for lottery prizes sold to or paid to winners by lottery retailers. Sales proceeds and unused instant tickets shall be delivered to the corporation or its authorized collection representative upon demand.

(b) The corporation shall require retailers to place all lottery proceeds due the corporation in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid over to the corporation. At the time of such deposit, lottery proceeds shall be deemed to be the property of the corporation. The corporation may require a retailer to establish a single separate electronic funds transfer account where available for the purpose of receiving moneys from ticket or share sales, making payments to the corporation, and receiving payments for the corporation. Unless otherwise authorized in writing by the corporation, each lottery retailer shall establish a separate bank account for lottery proceeds which shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.

(c) Whenever any person who receives proceeds from the sale of lottery tickets or shares in the capacity of a lottery retailer becomes insolvent or dies insolvent, the proceeds due the corporation from such person or his estate shall have preference over all debts or demands.

there remains issues of material fact. Specifically, the Defendant alleges that 1) the signatures on the ticket retailer contracts are forged and 2) that the Plaintiff miscalculated the amount of money owed.<sup>3</sup>

Debts resulting from "defalcation while acting in a fiduciary capacity" are excepted from discharge. 11 U.S.C. §523(a)(4). The party objecting to discharge bears the burden of showing by a preponderance of evidence that the debt is nondischargeable. Grogan v. Garner, 498 U.S. 279, 286, 111 S.Ct. 654, 659, 112 L.E.2d 755 (1991). For a debt to be excepted from discharge under §523(a)(4), the following factors must be met:

1. The debtor must have stood in a fiduciary capacity toward the creditor challenging discharge of the debt;
2. The fiduciary relationship must have existed prior to the creation of the debt; and
3. The debt must have resulted from some act of...defalcation by the debtor.

SunTrust Bank v. Roberson (In re Roberson), 231 B.R. 136, 139 (Bankr. S.D. Ga. 1999) (J. Walker), citing Quaif v. Johnson, 4 F.3d

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<sup>3</sup>The Defendant submitted two affidavits in support of his motion: Affidavit of Bettieanne Hart, filed April 2, 2002; and Affidavit of Samuel Washington, filed April 17, 2002. Under Local Rule 7.5, responses, reply memoranda, affidavits or any other materials must be filed within twenty days of service of a motion for summary judgment. The Plaintiff's summary judgment was served on March 5, 2002; the two affidavits are late, but in light of the judgment issued in state court are of no probative value here.

950, 953-955 (11<sup>th</sup> Cir. 1933). The term "fiduciary" in §523(a)(4) refers to technical trusts that existed prior to the creation of the debt, and not to constructive trusts, which are "created by the very acts which form the basis of the nondischargeability complaint." Utica Mutual Insurance Co. v. Johnson (In re Johnson), 203 B.R. 1017, 1021 (Bankr. S.D. Ga. 1997) (J. Dalis). A statute may create a technical trust. Quaif, 4 F.3d at 954 (Georgia statute requiring insurance agents to account promptly for and remit payments to insurers and prohibiting commingling of funds created technical trust for purposes of §523(a)(4)). A statute creating a technical trust must meet the following requirements:

1. define the trust res;
2. identify the fiduciary's fund management duties and authority;
3. impose duties upon the fiduciary prior to any wrongdoing; and
4. express a legislative design to create a trust.

Georgia Lottery Corp. v. Daniel (In re Daniel), 225 B.R. 249, 251 (Bankr. N.D. Ga. 1998).

O.C.G.A. §50-27-21, which is incorporated by reference into the lottery ticket retailer contracts, creates such a technical trust. In re Daniel, 225 B.R. at 251; Suwanee Swifty Stores, Inc. v. Georgia Lottery Corp. (In re Suwanee Swifty Stores, Inc.), 266 B.R. 544, 549 (Bankr. M.D. Ga. 2001). O.C.G.A. §50-27-21 is part of

the Georgia Lottery for Education Act. O.C.G.A. §50-27-1 et seq. Lottery ticket sale proceeds are identified as the trust res. The fiduciary's fund management duties and authority are outlined. Duties are imposed on the fiduciary with no reference to wrongdoing. The statute, by using the word "trust," clearly expresses a legislative intent to create a trust. In re Daniel, 225 B.R. at 251-52.

The Defendant argues that he was not a fiduciary because he did not sign either of the retailer ticket contracts. According to the Defendant, an employee forged his name on the instant ticket retailer contract and his name is not even listed at all on the on-line ticket retailer contract. The Georgia Lottery for Education Act defines a retailer as a person authorized to sell lottery tickets pursuant to a contract. A valid contract is therefore necessary to create a fiduciary relationship under O.C.G.A. §50-27-21. O.C.G.A. §50-27-3(18).

The problem with Defendant's position is that by failing to answer the Plaintiff's First Request for Admissions, the Defendant admits that he signed both contracts. (Req. Admission ¶¶ 6 & 7); FED. R. BANKR. P. 7036 (incorporates by reference FED. R. CIV. P. 36); U.S. v. 2204 Barbara Lane, 960 F.2d 126, 129 (11<sup>th</sup> Cir. 1992). By these admissions, the Defendant's arguments that the

contracts are invalid for a lack of signature fail. Both the on-line and instant ticket retailer contracts are valid. Furthermore, the Defendant admits that he was a fiduciary responsible for holding the lottery ticket proceeds in trust. (Pl.'s 1<sup>st</sup> Req. Admis. ¶¶ 10-15). Because the contracts both incorporate by reference O.C.G.A. §50-27-21, 1) the Defendant stood in a fiduciary relationship with the Plaintiff, who is challenging discharge of this debt and 2) this fiduciary relationship existed before the creation of the debt itself.

After establishing a fiduciary relationship, I now must determine whether the Defendant committed an act of defalcation. Unfortunately there is not a precise definition of "defalcation." Quiaf v. Johnson, 4 F.3d 950, 955 (11<sup>th</sup> Cir. 1993). The Eleventh Circuit Court of Appeals describes courts' efforts to define this term:

"Defalcation" refers to a failure to produce funds entrusted to a fiduciary. In re Alvey, 56 B.R. 170 (Bankr.W.D.Ky.1985). However, the precise meaning of "defalcation" for purposes of §§ 523(a)(4) has never been entirely clear. Turner, 134 B.R. at 657. An early, and perhaps the best, analysis of this question is that of Judge Learned Hand in Central Hanover Bank & Trust Co. v. Herbst, 93 F.2d 510 (2nd Cir.1937). Judge Hand concluded that while a purely innocent mistake by the fiduciary may be dischargeable, a "defalcation" for purposes of this statute does not have to rise to the level of "fraud," "embezzlement," or even "misappropriation." Id. at 512. Some cases have read the term even more broadly, stating that

even a purely innocent party can be deemed to have committed a defalcation for purposes of §§ 523(a)(4).

Because the defendant in Quaif intentionally transferred premiums held in trust into his payroll and operating accounts with no question of "innocent mistake or even negligence," the court concluded that his failure to remit these premiums was a defalcation under §523(a)(4). Id. The Quaif court cited with approval Judge Learned Hand's definition in Central Hanover Bank & Trust Co. v. Herbst, that "when a fiduciary takes money upon a conditional authority which may be revoked and knows at the time that it may, he is guilty of a 'defalcation' though it may not be a 'fraud,' or an 'embezzlement,' or perhaps not even a 'misappropriation.'" 93 F.2d 510, 512 (2<sup>nd</sup> Cir. 1937). Because defalcation does not meet the standard of fraud, courts have generally found that defalcation has no element of intent or bad faith. See Discount Home Center, Inc. v. Turner (In re Turner), 134 B.R. 646, 658 (Bankr. N.D. Okla. 1991). Defalcation, however, requires a minimum of misconduct on the part of the fiduciary. Central Hanver Bank & Trust Co., 93 F.2d at 512.<sup>4</sup>

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<sup>4</sup>Courts are divided as to the degree of misconduct required. For a thorough overview of the courts' disagreement over this issue, see Zohlman v. Zoldan, 226 B.R. 767, 775-77 (S.D.N.Y. 1998). Some courts have held that even innocent defaults may constitute defalcation. Rhode Island Lottery Commission v. Cairone (In re

Defalcation is the fiduciary's failure to account for assets entrusted to his care. State of New Jersey v. Kaczynski (In re Kaczynski), 188 B.R. 770, 778 (Bankr. D. N.J. 1995) (lottery ticket proceeds owed by debtor who failed to provide explanation held nondischargeable under §523(a)(4)). While Quaif defines defalcation as a failure to produce funds, the opinion establishes that a mere failure to produce is not defalcation by itself. Quaif, 4 F.3d at 955. A failure to produce coupled with a fiduciary's failure to explain adequately what happened to funds entrusted to his care and to show that the loss was not due to a wilful neglect of his duties as a fiduciary.

Under this standard, an innocent fiduciary who has properly fulfilled his duties but is unable to produce funds has not committed defalcation if he can properly explain - account - for the funds. Georgia Lottery Corp. v. Daniel (In re Daniel), 225 B.R. 249, 252 (Bankr. N.D. Ga. 1998) (lottery ticket proceeds held

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Cairone), 12 B.R. 60, 63 (Bankr. D. R.I. 1981) (debtors found to have committed defalcation because of unexplained failure to remit lottery ticket sale proceeds). Other courts hold that the fault must be greater than mere negligence. See Schwager v. Fallas (In the Matter of Schwager), 121 F.3d 177, 185 (5<sup>th</sup> Cir. 1997) ("[w]hile defalcation may not require actual intent, it does require some level of mental culpability...a "willful neglect" of fiduciary duty constitutes a defalcation-essentially a recklessness standard); Meyer v. Rigdon, 36 F.3d 1375, 1385 (7<sup>th</sup> Cir. 1994) (defalcation alleges more than a "mere negligent breach of fiduciary duty").



nondischargeable because debtor "provided no evidence to explain the deficiency").

I find that the Defendant's debt to Plaintiff resulted from defalcation. The Defendant was required by both O.C.G.A. §50-27-21(b) and the ticket retailer contracts to deposit ticket proceeds into a separate account by the end of the next banking day. The Defendant has not accounted for these funds, and has even admitted that he failed to maintain proceeds in a separate account. (Pl.'s 1<sup>st</sup> Req. Admis. ¶7). The Plaintiff was therefore unable to effectuate electronic transfers of the funds when it attempted to sweep the Defendant's account. The Defendant's failure to maintain this separate account is a dereliction of his responsibility as a fiduciary, willful misconduct, that resulted in the loss. The Defendant committed defalcation within the meaning of §523(a)(4).

The Defendant argues that he is not liable for this debt because he in fact paid all the funds owed to the Plaintiff. The Defendant is estopped from now denying the amount of debt because his liability has already been litigated in state court. The State Court of Burke County, Georgia awarded the Plaintiff \$7,130.77 on October 9, 1998. Collateral estoppel requires that judgment entered by a state court be given the same effect in federal court as it would in state court. Branton v. Hooks (In re Hooks), Ch. 7 Case

No. 97-30232, Adv. No. 97-03013A (Bankr. S.D. Ga. Dublin Division, September 10, 1999) (J. Dalis). In Georgia, collateral estoppel applies when:

1. There is an identity of issues between the first and second actions;
2. The duplicated issue must have actually and been necessarily litigated in the prior court proceedings;
3. The determination of the issue must have been essential to the prior judgment; and
4. The estopped party must have had a full and fair opportunity to litigate the issue during the course of the earlier proceeding.

Id. at 6. In the instant case, the state court awarded summary judgment to the Plaintiff for \$6,381.61 in principal, \$663.16 in attorney fees and \$86.00 in court costs. The principal amount of damages awarded corresponds exactly with the lottery ticket proceed deficiency. (Padgett Aff. Ex. C). There is therefore an identify of issues between the first and second actions. The state court awarded summary judgment, and not a default. The Defendant had a full and fair opportunity to litigate the issue. Defendant does not dispute that the state court judgment is final. The state court judgment does not set out the grounds or reasoning for its holding, however, and therefore the state court judgment is given preclusive effect only with regard to the amount of the debt.

The Plaintiff asks that the entire state court judgment of \$7,130.77 be declared not discharged. Only \$6,381.61 of this

judgment consists of principal, lottery ticket sales proceeds. Also included in the judgment are \$663.16 in attorney fees and \$86.00 in court costs. Under both the on-line and instant ticket retailer contracts, the Plaintiff is entitled to any court costs and attorney fees incurred in collecting any monies owed. (Contracts, § R ¶ 2). These additional costs are also excepted from discharge because attorney fees awarded by a state court which are contractually authorized are nondischargeable when the underlying principal debt is found nondischargeable by the bankruptcy court. Klingman v. Levinson (In re Levinson), 831 F.2d 1292, 1296 (7<sup>th</sup> Cir. 1987).

It is therefore ORDERED that summary judgment is granted to the Plaintiff determining the Defendant's debt to Plaintiff established in the judgment of the State Court of Burke County, Georgia of \$7,130.77 together with interest accruing on the judgment according to State law not discharged in the Defendant's underlying Chapter 7 case No. 98-13327 pursuant to 11 U.S.C. §523(a)(4).

JOHN S. DALIS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 22<sup>ND</sup> Day of May, 2002.